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Letter dated 18 July 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 12 April 2002 (S/2002/452).

The Counter-Terrorism Committee has received the attached supplementary report from South Africa, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you could arrange for this letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Note verbale dated 8 July 2002 from the Permanent Mission of South Africa to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

The Permanent Representative of the Republic of South Africa to the United Nations presents his compliments to the Chairperson of the Counter-Terrorism Committee established pursuant to Security Council resolution 1373 (2001) and has the honour to respond to the points raised in the latter's letter dated 15 April 2002. The enclosure attached herewith constitutes the second report of the Government of South Africa on the steps taken to implement resolution 1373 (2001).

Enclosure

South Africa's reply to the letter dated 15 April 2002 received from the Chairperson of the Security Council's Counter-Terrorism Committee, Ambassador J. Greenstock, containing comments on South Africa's national report (S/2001/1281) submitted pursuant to paragraph 6 of Security Council resolution 1373 (2001)

General Comment

There is currently no omnibus legislation that could be applied to countering all aspects of terrorism in South Africa. A comprehensive legislative framework is nevertheless in place that could be used to prevent and prosecute acts of terrorism. Some amendments have already been made to rectify deficiencies identified in the existing legislative framework, to make provision for the combating of terrorism. For example, amending the offences provided for in the Civil Aviation Offences Act (Act No. 70 of 1972) as set out in Section B paragraph 1.1.3 of South Africa's National Report pursuant to resolution 1373 (2001) (S/2001/1281).

In addition, it has been found that the current legislative framework does not cover relatively new concepts, such as the criminalising of assistance to terrorist groups. It is, however, envisaged that the primary means of overcoming shortcomings pertaining to terrorism in the legislative framework, will be addressed in the proposed Anti-Terrorism Bill. The nature and processes relating to the Anti-Terrorism Bill have been described in detail in the National Report (S/2001/1281) and are further elaborated on below, in response to the Committee's questions. The South African Law Commission has been at great pains to ensure that the Bill is drafted consistently with the provisions of the Bill of Rights enshrined in the South African Constitution. In addition there has been a wide consultative process and the Bill has drawn widely on international best practice.

Subparagraph 1 (a):

- The report indicates that provision is currently made by the Prevention of Organised Crime Act 1998 for monitoring suspicious financial transactions. How, in particular, does the Act relate to transactions in support of terrorism or criminal purposes generally, as compared with its application to the proceeds of crime? The report also indicates that extensive provision is to be made by the proposed Financial Intelligence Centre Act in relation to the vigilance (transaction-reporting) obligations of an extensive range financial intermediaries, including those outside the conventional financial sector (e.g. lawyers). How does the proposed Act, which seems to concentrate on criminal origins of funds and offences against revenue and foreign-exchange laws, deal with the prevention of economic and financial operations with terrorist or other criminal aims?

1. The provisions of the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998) and the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001) have been developed to counter

money-laundering in its traditional sense and are not specifically designed to apply to terrorism or terrorist activities. These provisions will nevertheless be applicable to transactions involving funds or assets associated with terrorism or terrorist groups in certain circumstances.

2. In the case of the current reporting duty under the Prevention of Organised Crime Act the element of the proceeds of unlawful activities has to be present for a transaction to be reportable. This will include transactions involving funds or assets associated with terrorist groups if the activity from which the funds or assets have been derived constitutes an offence in the place where it was carried out. Accordingly, transactions involving funds or assets derived from crimes which are intended to finance future terrorist activities and funds or assets derived from terrorist activities which constitute offences, all fall within the scope of this reporting duty.

3. However, transactions, which are intended to finance terrorist activities, but which do not involve the proceeds of unlawful activities do not fall within the reporting duty of the Prevention of Organised Crime Act. The provisions on reporting on transactions in the Prevention of Organised Crime Act will be replaced by provisions creating a number of reporting duties in the Financial Intelligence Centre Act.

4. Proposals for legislative amendments to the reporting provisions of the Financial Intelligence Centre Act, (which will replace the relevant provisions of the Prevention of Organised Crime Act), to introduce a reporting duty concerning suspicions that transactions are being conducted to finance terrorism, are being considered for inclusion in the Anti-Terrorism Bill.

5. In the case of the Financial Intelligence Centre Act the same reasoning as set out in paragraph 3, will apply with regard to many suspicious or unusual transactions. There are furthermore a number of instances where the element of the proceeds of unlawful activities is not required to make a transaction reportable. These are transactions involving cash amounts exceeding the prescribed threshold, transactions that have no apparent business or lawful purpose, transactions that are aimed at avoiding another reporting duty and transactions aimed at evading tax. All transactions aimed at making funds or assets available to terrorist groups or facilitating future terrorist activities, which fall within one of these categories, will have to be reported under the provisions of the Financial Intelligence Centre Act.

6. The reporting of such transactions will, however, still be coincidental and will not occur because of the fact that the transactions are aimed at making funds or assets available to terrorist groups or facilitating future terrorist activities. Such a transaction which does not exceed the threshold for reporting cash transactions, does not involve the proceeds of unlawful activities, does not appear to be without an apparent business or lawful purpose and does not raise a suspicion that it is being conducted to avoid a reporting duty or to evade tax, will not fall within the reporting duties of the Financial Intelligence Centre Act.

7. The provisions of the Prevention of Organised Crime Act cannot be used to monitor transactions by a specific person or organisation. These provisions do furthermore not apply to transactions that do not involve a suspicion concerning the proceeds of unlawful activities. The provisions of

the Financial Intelligence Centre Act provide for the monitoring of transactions conducted by specific persons or organisations if there is a suspicion that they are involved in the laundering of proceeds of unlawful activities. The Financial Intelligence Centre Act, however, does not allow the monitoring of transactions conducted by specific persons or organisations on the basis that they may be suspected of involvement in terrorist activities.

8. It is intended that the introduction of a power to monitor transactions of persons on the basis of their suspected involvement in the financing of terrorism be considered together with the efforts to introduce a reporting duty concerning transactions suspected of being associated with the financing of terrorism.

9. It is envisaged that the Anti-Terrorism Bill will create a mechanism whereby applications for the monitoring of transactions conducted by persons or organisations on the basis that they are suspected of involvement in terrorist activities will be possible.

Monitoring and reporting of transactions in terms of Prevention of Organised Crime Act, 1998, and the Financial Intelligence Centre Act, 2001:

The Prevention of Organised Crime Act, 1998

10. The Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998, "the Prevention of Organised Crime Act") in section 7, provides for a duty to report certain information. The reporting duty under the Prevention of Organised Crime Act applies to any person who carries on a business, or is in charge of, or employed by a business, or who manages a business. Reports in terms of these provisions are currently made to the Commercial Branch of the South African Police Detective Service.

11. The duty deals with three different scenarios where reporting must take place. The first is where property comes into the possession of the person or business concerned. In this case a suspicion that the property is the proceeds of unlawful activities must be reported.

12. The second is where a specific transaction involving the person or business concerned takes place. In this case the duty is to report a suspicion that the transaction will facilitate the transfer of the proceeds of unlawful activities.

13. The third is where a transaction that involves the person or business concerned has been discontinued. In this case a suspicion that the transaction, had it been concluded, may either have brought the proceeds of unlawful activities into the possession of the person or business, or have facilitated the transfer of those proceeds, must be reported.

14. The term "proceeds of unlawful activities" is defined in the Prevention of Organised Crime Act to include any property which was derived, received or retained in the Republic or elsewhere as a result of any unlawful activity. "Unlawful activity" is defined in the same Act to include any

conduct that constitutes a crime or contravenes a law whether it occurred in the Republic or elsewhere.

15. When all of this is read together it means that persons engaged in business have to report suspicions that they are dealing with property that was derived within South Africa or elsewhere from an offence that took place within South Africa or elsewhere.

The Financial Intelligence Centre Act, 2001

16. The Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001, "the Financial Intelligence Centre Act") contains a number of duties to report information. These include a duty under section 28 to report cash transactions exceeding a certain threshold, which is still to be determined, and a duty under section 29 to report so-called suspicious and unusual transactions. These provisions have not yet taken effect since the relevant authorities are in the process of developing the necessary infrastructure (such as the establishment of a Financial Intelligence Centre and the drafting of secondary legislation). It is foreseen that the duty to report suspicious and unusual transactions will take effect during the second half of 2002. Once it takes effect this duty will replace the current reporting duty under the Prevention of Organised Crime Act. The duty to report transactions exceeding a certain threshold will probably take effect during 2003.

Cash transactions

17. This duty will apply to so-called accountable institutions and reporting institutions. Accountable institutions are listed in Schedule 1 to the Financial Intelligence Centre Act and include all financial and investment service providers. Reporting institutions are listed in Schedule 2 to the Financial Intelligence Centre Act and include only dealers in motor vehicles and Kruger Rands.

18. This duty will arise when the institution concerned concludes a transaction with a client in terms of which an amount of cash exceeding the threshold is paid to the client or received from the client.

19. Cash, in this provision, means South African coin and paper money, coin and paper money of another country and travellers' cheques. The threshold will be prescribed by regulation.

Suspicious and unusual transactions

20. The duty under the Financial Intelligence Centre Act to report suspicious and unusual transactions will apply to the same category of persons as the current duty under the Prevention of Organised Crime Act. This is any person who carries on a business, or is in charge of, or employed by a business, or who manages a business. Reports made under the duty in the Financial Intelligence Centre Act will be made to the Financial Intelligence Centre, which is established by the same Act.

21. The duty under the Financial Intelligence Centre Act to report suspicious and unusual transactions will apply in the same three scenarios referred to above, but will also be somewhat wider. In addition the duty under the Financial Intelligence Centre Act will also deal with four other scenarios.

22. The first scenario is where there is a suspicion that a transaction or series of transactions to which the business is a party has no apparent business or lawful purpose. There can be numerous examples of such transactions but this will generally include transactions which appear unnecessarily complex compared to their apparent purpose, transactions which involve unusual amounts, given the client profile or transactions which do not seem to be aimed at achieving a profit or avoiding a loss.

23. The second is where there is a suspicion that a transaction or series of transactions to which the business is a party is conducted to avoid giving rise to any of the other reporting obligations under the Financial Intelligence Centre Act. An example of this may be that cash transactions are structured in order to remain below the amount that will trigger the cash threshold reporting duty.

24. The third is where there is a suspicion that a transaction, or series of transactions, to which the business is a party, is conducted to evade tax.

25. The fourth is where there is a suspicion that the business is used for money-laundering purposes.

Monitoring Orders

26. The Financial Intelligence Centre Act, in section 35, will provide for monitoring orders to be issued by a judge. These will be issued if there is reason to suspect that a person is using an institution or an account or facility at an institution for money-laundering purposes. In terms of a monitoring order the institution will have to report all transactions conducted by a specific person or all transactions involving a specific account or facility.

27. The term "money-laundering" in terms of the Financial Intelligence Centre Act refers to activities that have the effect of concealing the nature, source or movement of the proceeds of unlawful activities or any person's interest in such proceeds. The concepts of "proceeds of unlawful activities" and "unlawful activity" have the same meaning in the Financial Intelligence Centre Act as in the Prevention of Organised Crime Act.

- How do the Currency and Exchange Act and the Exchange Control Regulations contribute to the fight against terrorism financing (except as mentioned in the following dot-point item)? How does the Regulation of Foreign Military Assistance act, which seems to focus on conventional military formations, assist in the curbing of terrorist activities, in particular.

1. Certain banks were appointed as Authorised Dealers in foreign exchange. Their function is to assist the Exchange Control Department of the South African Reserve Bank in administering

exchange control. All applications to Exchange Control have to be made through an Authorised Dealer. The Exchange Control Rulings, issued by the Exchange Control Department of the South African Reserve Bank, set out the authorities granted to Authorised Dealers and the rules and procedures to be followed by the Authorised Dealers in dealing with day to day matters relating to exchange control. These are amended as required and supplemented by circulars. The Exchange Control Rulings are in fact, a technical handbook for use by the Authorised Dealers, containing authorities, instructions and conditions applicable to the wide range of transactions that they may undertake on behalf of their clients. It follows, therefore, that only transactions specifically approved by the Exchange Control Department or those specifically authorised in terms of the Exchange Control Rulings may be effected. It will be a contravention of the Exchange Control Regulations should any foreign currency acquired from an Authorised Dealer be used for any purpose other than for which it was acquired.

2. Whilst the Currency and Exchanges Act and the Exchange Control Regulations have not been designed to deal with the fight against terrorism, these provisions can and shall be applied to restrict the flow of funds from South Africa to contribute towards financing terrorism activities outside the Common Monetary Area.

3. The Regulation of Foreign Military Assistance Act, 1998 (Act No.15 of 1998) has a broad definition and curbs any assistance to any party in an armed conflict and therefore applies to terrorist groups. Section 3 of the Act (attached as Addendum B to Report S/2001/1281) prohibits the rendering of any unauthorised military assistance (which includes financial assistance) by any person in the Republic or elsewhere to any state or organ of state, group of persons or other entity or persons unless he or she has been granted authorisation by the National Conventional Arms Control Committee (NCACC), in consultation with the Minister of Defence. The NCACC is a ministerial, controlling committee that was established by an August 1995 Cabinet decision to oversee South Africa's conventional arms policies and related arms transactions, in consultation with the Minister of Defence.

4. The Act provides that any person who contravenes a provision of the Act (i.e. by providing unauthorised military assistance) shall be guilty of an offence and liable to conviction to a fine or to imprisonment or both.

5. Foreign military assistance is broadly defined and includes military or military related services and also attempts, encouragement, incitement or solicitation thereof. Regulated services include advice or training, personnel, financial, logistical, intelligence or operational support; personnel recruitment; recruitment; medical or para-medical services; security services; any action aimed at overthrowing a State or undermining its constitutional order or any other action.

➢ The report states that the absence of an UN-endorsed list of persons with terrorist links makes practical implementation of paragraph 1 of the Resolution very difficult. Many countries establish such lists on a national basis, in many cases by adopting lists provided by other countries, often using their banking and foreign-exchange laws to support them. The CTC believes that such an approach is appropriate, as would be the adoption by a State of legislation that dealt with the matter generically. The CTC would therefore be grateful for an indication of the particular difficulty that South Africa faces in this regard. In this connection, the CTC believes that this approach would be available despite the reservations expressed below (sub-paragraph 1(c)) on the scope of the regulation-making power under the Currency and Exchange Act 1933.

1. The difficulty that South Africa faces with regard to the practical implementation of paragraph 1 of resolution 1373 (2001), is to identify or target, in terms of the resolution, those "persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and entities acting on behalf of or at the direction of such persons", against whom action should be taken. The relevant South African authorities have taken action to prevent and suppress the financing of terrorist acts by alerting the South African financial sector of lists containing the names of identified terrorists and terrorist organisations/entities obtained from the UN Security Council Sanctions Committee on Afghanistan, and at a bilateral level. It is, however, not clear whether these lists would suffice for the identification or targeting of terrorists and terrorist organisations/entities for purposes of implementing paragraph 1 of resolution 1373 (2001) comprehensively.

2. It would assist member states in their efforts to implement resolution 1373 (2001) fully, if the Security Council could develop and/or endorse lists of terrorists and terrorist organisations/entities in terms of resolution 1373 (2001) specifically.

➢ Please provide a progress report on the passage and implementation of the Financial Intelligence Centre Bill and, in particular, any amendment of it to make it more specifically relevant to the fight against terrorism.

1. The Financial Intelligence Centre Act was adopted by the South African Parliament on 6 November 2001 and was assented to by the President on 28 November 2001. Certain provisions, including those establishing the Financial Intelligence Centre, took effect on 31 January 2002. A process is currently underway to develop the Financial Intelligence Centre and to draft regulations that will support the operation of the other provisions of this Act. It is envisaged that the majority of these provisions, which include provisions concerning the reporting of suspicious and unusual transactions, will take effect during the second half of this year.

Subparagraph 1 (b):

➢ Please provide a report on progress with the passage and implementation of the Anti-Terrorism Bill currently before the South African Parliament.

1. The Anti-Terrorism Bill is not currently before the South African Parliament.

2. The South African Law Commission (the Commission) is presently engaged in finalising its report on the Anti-Terrorism Bill. The Commission appreciates the international expectations and demands that its domestic legislation will and must comply with the requirements posed by the international conventions for combating terrorism and particularly the Convention on the Suppression of the Financing of Terrorism. The Commission is, therefore, committed to finalising this investigation as soon as possible. The working methods of the Commission entail that its project committee has to approve a draft report before it is submitted to the Commission for its approval. The Commission's working methods also entail that comparative studies are carried out in order to enable the Commission to benefit from experiences elsewhere in the world. In the context of terrorism this means a study of a host of very recent legislative measures emanating from the USA, Canada, the UK and Australia. In finalising the Commission's report on terrorism, these legislative measures, the Commission's preliminary proposals and the comments received on them, are subjected to a thorough evaluation and analysis in order to draft final recommendations and a final Bill.

3. The Commission's project committee on security legislation considered a draft report on 27 April 2002. The committee met again on 18 May 2002 and decided to finalise its deliberations on the draft report by 14 June 2002. Once the project committee has considered, deliberated on and approved the draft report, it will be submitted to the full Commission for its consideration. It is envisaged that this meeting will take place during August 2002. As soon as amendments resulting from this meeting are effected, the report and final Bill will be submitted to the Minister of Justice and Constitutional Development. The latter will then submit the report to the Minister of Safety and Security who will be responsible for promoting the Bill. It is envisaged that Cabinet approval for the introduction of the proposed legislation will be obtained during the third quarter of 2002. The Bill will thereafter be considered by Parliament.

Subparagraph 1 (c):

> ➢ South Africa's procedures for the freezing and provisional seizure of criminal funds and assets seem to be confined to those provided for under the Currency and Exchange Act 1933. Does the regulation-making power in that Act support the freezing of the whole range of assets contemplated by sub-paragraph 1(c) in relation to the suspected commission of offences relating to terrorism and its financing. It is important to distinguish between seizures occurring in the course of investigations and confiscations ordered upon sentencing. Does any legislation currently under consideration address this issue?

1. It is envisaged that mechanisms will be created by the Anti-Terrorism Bill to deal with the seizure and forfeiture of property suspected of being involved in terrorist activities.

2. The Prevention of Organised Crime Act provides for two types of orders. The first type is aimed at the so-called freezing of property. The second type is aimed at the confiscation of an amount of money or the forfeiture of property to the State. Property, by definition in the Act, includes money.

Freezing of property

3. The orders aimed at the freezing of property for which the Act provides are restraint orders and preservation of property orders. The purpose of a restraint order as well as a preservation of property order is to obtain temporary control over property (i.e. "freezing" the property) pending the finalisation of further proceedings for the final confiscation of money or forfeiture of property.

4. A restraint order can be applied for when a person is to be charged with an offence or when a prosecution for an offence has been instituted against a person. The Court may grant a restraint order if it appears likely that a trial court will, subsequent to a conviction, find that a person has benefited from criminal activity and make a confiscation order against that person. The restraint order will apply to the property of the person whose benefit from criminal activity will be considered, as well as the property of persons to whom he or she has made certain gifts.

5. A preservation of property order can be obtained in respect of any property that was concerned in the commission of an offence referred to in Schedule 1 to the Act and to the proceeds of any unlawful activity. It is not a requirement for the granting of a preservation of property order that criminal proceedings have been instituted, or are even envisaged, against any person.

6. To summarise, orders for the "freezing" of property in terms of the Act can be obtained, on the one hand, if the property concerned belongs to a person who has probably benefited from criminal activity in respect of which criminal charges are envisaged or have been

instituted or, on the other hand, if the property itself was concerned in the commission of certain offences or is the proceeds of unlawful activity.

Forfeiture of property

7. The orders aimed at permanently dispossessing a person of money or assets for which the Act provides are confiscation orders and forfeiture orders.

8. A confiscation order may be made after a conviction and subsequent to an enquiry into the value of the benefit that a person has derived from the relevant offence. The order is an order for the payment of an amount of money equal to the value, which the court places on the person's benefit. The order may be executed by the realisation of the property (i.e. converting the property into money) over which a restraint order was obtained.

9. A forfeiture order may be made if a preservation of property order is in force in respect of certain property and the court finds that the property was probably concerned in the commission of a certain offence or that it is the proceeds of any unlawful activity. In the case of a forfeiture order the specific property that is linked to the relevant offence or unlawful activity is forfeited to the State.

International co-operation

10. The International Co-operation in Criminal Matters Act, 1996, (Act No. 75 1996) of provides that orders for the freezing and forfeiture of assets granted by foreign courts may be sent to the Director-General of the Department of Justice and Constitutional Development with a request for assistance in executing those orders. Such an order may subsequently be registered with the appropriate court in South Africa upon which it will have the effect of an order of that court. The order can then be executed as if it was granted in South Africa in terms of the relevant provisions of the Act.

11. If the authorities in a foreign jurisdiction are unable to obtain an order in their courts which can be executed in South Africa, they will have to place the South African authorities in possession of sufficient information to prove the facts referred to in the paragraphs above, upon which a South African court may be convinced to grant an order.

Applicability to specific individuals

12. The Act was not developed with combating terrorism in mind. The provisions of the Act can therefore not be applied to property merely because the property belongs to a certain person or organisation, without proof of that person's or organisation's involvement in unlawful activity. These provisions can also not be applied to property, which may in future be used to facilitate certain activities or be placed at the disposal of certain persons or organisations.

13. It is envisaged that mechanisms will be created by the Anti-Terrorism Bill to deal with the seizure and forfeiture of property suspected of being involved in terrorist activities.

14. The provisions of the Act are aimed at removing the profit from criminal activity and discouraging persons to use their property, or allow their property to be used, for the commission of crime. A link with unlawful activity must therefore always be present for the provisions of the Act to be applicable. This link can be either between the person to whom the property belongs and an unlawful activity or between the relevant property itself and an unlawful activity. "Unlawful activity" as defined in the Act is a wide concept and includes any conduct, which constitutes a crime whether the conduct occurred in South Africa or elsewhere.

➢ Does any of the legislation currently under consideration address this question?

1. The Prevention of Organised Crime Act adequately addresses the freezing and forfeiture of the proceeds and instrumentalities of unlawful activities in South Africa. The Financial Intelligence Centre Act does not contain any provisions for the freezing and forfeiture of assets, except for a limited power to seize and forfeit cash which a person attempts to transport into or out of the Republic without reporting this in terms of the Act.

2. Consideration is being given to the inclusion of provisions dealing with the freezing and forfeiture of assets associated with the financing of terrorism in the Anti-Terrorism Bill.

Subparagraph 1 (d):

➢ What preventive controls and surveillance measures has South Africa put in place to ensure that funds intended for the financing of terrorism are not transferred through charitable, religious or cultural organisations?

1. Currently any information received from any police service/force or intelligence agency is dealt with on an ad hoc basis. Any suspicious transaction is reported either by the South African Reserve Bank or a force/service/agency to Crime Intelligence for further investigation. Crime Intelligence also requests additional information from the South African Reserve Bank in order to conduct a more detailed investigation. In terms of the Prevention of Organised Crime Act, 1996 (Act No. 121 of 1996), all suspicious transactions are currently reported to the Commercial Crime Branch of the South African Police Service who also informs Crime Intelligence for in depth investigation (profiling). Once the Financial Intelligence Centre is established, suspicious transactions will be reported to the Centre.

2. Money (in cash) that enters South Africa is controlled by Customs and Excise, if this occurs through a legal border post. Detected border post facilities have been upgraded since 11 September 2001.

3. South Africa is of the view that better international co-operation needs to be established as it is difficult to determine whether organisations are charitable, religious or cultural when money is transferred from South Africa abroad and whether those organisations support terrorism. The further transfer of money equally poses a problem.

4. The South African intelligence community is, however, exploring avenues to determine this. Should organisations be identified as having ties with terrorism, those organisations will be put under surveillance and investigated. In South Africa, the necessary steps can be taken to investigate the organisations, should they have been identified as organisations with ties to terrorism.

➢ Does South Africa have any provisions for regulating alternative money transfer agencies (such as hawala')?

1. South Africa does not have provisions for specifically regulating *hawala* money-transfer agencies. However, South Africa, under the leadership of the Minister of Finance, Mr Trevor Manuel, forms part of an international working group investigating ways to counter funding for terrorism groupings, which include the *hawala* system.

2. In terms of present local legislation to counter illegal money transfers such as *hawala*, section 29 (1) and (2) of the Financial Intelligence Centre Act 2001 (Act No. 38 of 2001) makes provision for suspicious and unusual transactions.

Subparagraph 2 (a):

➢ How may the criminal legislation mentioned be applied to acts carried out in preparation for terrorist acts?

1. South African law does not provide for a crime of "preparation". It is therefore important to understand the context in which this question is being asked, as the question will need to be interpreted within the provisions and terminology used in the South African legal lexicon and legislative framework.

2. At present it is not clear in which context the report was supposed to address the issue of preparation for terrorist acts. In relation to sub-paragraph 2(a), which deals with a prohibition to provide support to terrorist organisations, preparation is not referred to at all.

3. At this stage it can be indicated that South African law does provide for prosecution for the ancillary crimes such as attempt, conspiracy and incitement. This is provided for the in the Riotous Assembly Act, 1956 (Act No. 17 of 1956).

Section 18 (1) of this Act states that:

"18 (1) Any person who attempts to commit any offence against a statute or a statutory regulation shall be guilty of an offence and, if no punishment is expressly provided thereby for such an attempt, be liable on conviction to the punishment to which a person convicted of actually committing that offence would be liable".

Conspiracy, which is a preparation act, is dealt with in section 18 (2) of the same Act that states:

"Any person who –

(a) Conspires with any other person to aid or procures the commission of or to commit, or
(b) Incites, instigates, commands, or pressures any other person to commit

any offence, whether at common law or against a statute or statutory regulation, shall be guilty of an offence and liable on conviction to the punishment to which a person convicted of actually committing that offence would be liable".

4. Similarly the Internal Security Act, 1982 (Act No. 74 of 1982) provides that:

"Any person who with intent to –

(a) overthrow or endanger the State authority in the Republic;

(b) achieve, bring about or promote any constitutional, political, industrial, social or economic aim or change in the Republic; or

(c) induce the Government of the Republic to do so or to abstain from doing any act or to adopt or to abandon a particular standpoint.

In the Republic or elsewhere –

i. commits an act of violence or threatens or attempts to do so;

ii. performs any act which is aimed at causing, bringing about, promoting or contributing towards such act or threat of violence, or attempts, consents or takes any steps to perform such act;

iii. conspires with any other person to commit, bring about or perform any act or threat referred to in paragraph (i), or act referred to in paragraph (ii), or to aid in the commission, bringing about or performance thereof; or

iv. incites, instigates, commands, aids, advises, encourages or procures any other person to commit, bring about or perform such act or threat,

shall be guilty of the offence of terrorism and liable on conviction to the penalties provided for by law for the offence of treason".

5. It can also be noted that the Regulation of Foreign Military Assistance Act, 1998 (Act No. 15 of 1998) also covers any attempts to render military services or military-related services. In this regard the CTC is referred to the definition as spelled out in greater detail in the section dealing with terrorism financing on page 7 of this report.

➢ Could South Africa please provide a progress report on the legislative initiatives in the area of counter-terrorism announced for 2002.

1. The South African Police Service has drafted an Explosives Bill, which will be introduced to Cabinet soon. The Bill endeavours to follow the international trend in classification of explosives as well as international obligations with regard to control of explosives. The requirements in the International Conventions on the Marking of Plastic Explosives as well as the International Convention on the Suppression of Terrorist Bombings were taken into consideration when drafting the Bill.

2. Subject to finalisation, approval and enactment of the Anti-Terrorism Bill, it is envisaged that this Bill will provide for specific offences in respect of murder, kidnapping or other attacks upon the person or liberty of an internationally protected person, hostage taking, unlawful possession of nuclear material, acts against international maritime navigation, acts against fixed platforms located on the continental shelf, and the seizure and forfeiture of property suspected of being involved in terrorist activities. By creating these offences in South African domestic law, the way will be paved for South Africa to ratify the Conventions and Protocols it still needs to ratify:

   - The Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons;
   - The International Convention Against the Taking of Hostages;
   - The Convention on the Physical Protection of Nuclear Material;
   - The Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation;
   - The Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf;
   - The International Convention for the Suppression of Terrorist Bombings; and
   - The International Convention for the Suppression of the Financing of Terrorism.

➢ How does South Africa control the establishment in its territory of para-military groups that have the potential to engage in terrorist activities? What measures have been implemented to prevent the possible establishment of such groups in its territory?

1. South Africa controls the establishment in its territory of para-military groups through the Second Criminal Law Amendment Act, 1992 (Act No. 126 of 1992) and the Regulation of Foreign Military Assistance Act, 1998 (Act No. 15 of 1998).

2. Section 13 of the Second Criminal Law Amendment Act prohibits the organising, training, equipping or arming of any organisation if the purpose of that organisation is to usurp some or all of the functions of either the South African Police Service or the South African National Defence force. Any person who contravenes the provisions of this section shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 10 years.

3. The CTC's attention is also drawn to the provisions of the Regulation of Foreign Military Assistance Act, 1998, appended as Addendum B to the National Report (S/2001/1281) and explained in detail in the National Report, as well in page 7 of this report.

➢ Please describe the measures, which prevent terrorists obtaining weapons within or outside South Africa's territory, in particular small arms or light weapons? Please outline the legislation concerning the acquisition and possession of such weapons? Please also outline the National arms Control Bill mentioned in the report and provide a progress report on its passage and implementation.

1. The possession of firearms in South Africa is strictly regulated by the Firearms Control Act, 2000 (Act No. 60 of 2000) which makes provision for a license to possess a firearm and criminalises the possession of firearms without the license.

2. In terms of this act:

   (a) A competence certificate must be obtained by a person, 21 years or older, before he/she can apply for a license to possess a firearm. This certificate is only issued after the individual applying has been scrutinized, especially his background information with regard to a tendency for violence (Section 9).

   (b) The person's competence certificate must be renewed every five years in terms of Section 10.

   (c) A separate license must be obtained for each firearm (Section 11).

   (d) For self-defence, only one firearm may be obtained and only certain firearms may be obtained for self-defence (Section 13).

   (e) Dealers, collectors and hunters are also scrutinised and have to be licensed.

3. Contraventions of this act are dealt with severely and sentences are as follows:

   (a) Less serious offences – sentences range from 2 years imprisonment to 15 years.

   (b) For manufacturing, importing, exporting and trading in unlicensed firearms and if a person is not licensed to manufacture or trade in ammunition, 25 years imprisonment.

4. Furthermore, a person can be declared unfit to possess a firearm when found guilty of high treason, sedition, malicious damage to property and other crimes where violence is an element.

5. The South African Police Service is currently following the constitutional route to have:

   - The Protocol on the Control of Firearms, Ammunition and other related Materials in the Southern African Development Community (SADC) region, ratified.

   - The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition supplementing the United Nations Convention against Trans National Organised Crime, signed.

6. The Committee's attention is drawn to the National Report (S/2001/1281) which deals comprehensively with legislation relating to weapons, including the Regulation of Foreign Military Assistance Act (Addendum B), the Armaments Development and Production Act (Addendum K), the Arms and Ammunitions Act (Addendum L) and the National Conventional Arms Control Bill.

7. As far as progress on the National Conventional Arms Control Bill is concerned, the Bill is currently under consideration in the National Assembly.

Subparagraph 2 (b):

> ➢ Please outline the measures, both legislative and practical, preventing entities and individuals, from recruiting, collecting funds or soliciting other forms of support for terrorist activities be carried out inside or outside South Africa, including in particular:
>
> - The carrying out, within or from South Africa, of recruiting, collecting of funds and soliciting of other forms of support from other countries; and
>
> - Deceptive activities such as recruitment based on a representation to the recruit that the purpose of the recruitment is one (e.g. teaching) different from the true purpose and collection of funds through front organisations.

1. In terms of the Regulation of Foreign Military Assistance Act, rendering military assistance to a party to an armed conflict is prohibited. The definition of "military assistance" in the Act includes

financial support and personnel recruitment. The Act also specifies that no person "within the Republic or elsewhere" may render such foreign military assistance.

2. The National Conventional Arms Control Bill will seek to regulate the trade in conventional arms, by stipulating that no person may engage in such trade unless registered with the secretariat of the National Conventional Arms Control Committee and is authorised by a permit to do so. The term "conventional arms" includes brokering and services. Both the terms "brokering" and "services" are further defined, whereby the latter includes actions such as aid, advice, assistance, training, product support and brokering services.

Subparagraph 2 (e):

> Are the relevant provisions of the laws of South Africa applicable in all of the following circumstances:
>
> - Acts committed outside South Africa by a person who is a citizen of, or habitually resident in South Africa (whether that person is currently present in South Africa or not);
> - Acts committed outside South Africa by a foreign national who is currently in South Africa?

1. It is envisaged that the Anti-Terrorism Bill will contain a provision setting out the jurisdiction of South African courts in respect of terrorist acts which occur and acts performed in preparation of terrorism, not only inside but also outside the Republic. The following provision was contained in the Bill which formed part of the discussion paper and which set out the preliminary proposals on the jurisdiction of South African courts in respect of terrorism:

"15. The Courts of the Republic shall have jurisdiction in respect of any offence referred to in this Act, if –

(a) the perpetrator of the act is arrested in the territory of the Republic, in its territorial waters or on board a ship flying the flag of the Republic or an aircraft registered in the Republic; and

(b) the act has been or is committed –

(i) in the territory of the Republic and the perpetrator of the act is arrested in the territory of the Republic, or committed elsewhere, if the act is punishable in terms of the domestic laws of the Republic or in terms of the obligations of the Republic under international law;

(ii) on board a vessel or a ship or fixed platform flying the flag of the Republic or an aircraft which is registered under the laws of the Republic at the time the offence is committed;

(iii) by a national or group of nationals of the Republic;
(iv) against a national of the Republic;
(v) against the Republic or a government facility of the Republic abroad, including an embassy or other diplomatic or consular premises, or any other property of the Republic;
(vi) by a stateless person or refugee who has his or her habitual residence in the territory of the Republic;
(vii) on board an aircraft which is operated by any carrier registered in the Republic; or
(viii) against the security of the Republic".

2. As a general principle South African law does not establish extra-territorial jurisdiction. However, extra-territorial jurisdiction is provided for in specific legislation, which would apply to South African nationals outside South African territory or foreign nationals currently in South Africa. Legislation, which provides for extra-territorial jurisdiction relevant to the combating of terrorist acts, includes:

- The Regulation of Foreign Military Assistance Act, 1998, which provides that no person may "within the Republic or elsewhere" render foreign military assistance.

- The Civil Aviation Offences Act, 1972, (Act No.10 of 1972) which provides in section 3 that South African courts shall have jurisdiction over crimes committed on board South African aircraft anywhere in the world. In addition the courts will have jurisdiction over crimes committed on board any other aircraft if the aircraft lands in South Africa and the perpetrator is still on board or if the lessee of an aircraft has his principle place of business in the Republic or if the perpetrator is present in the Republic.

- The Prevention of Organised Crime Act, 1998 which provides in section 2 for the jurisdiction of the courts over a person who "within the Republic or elsewhere" commits an offence relating to racketeering activities (which is defined as the planned, ongoing, continuous or repeated involvement in any [serious] offence listed in the schedule to the Act.

- The Internal Security Act, 1982 which provides in section 54 for jurisdiction of the Courts over a person "... in the Republic or elsewhere ..." who committed an act of terrorism against the constitutional sovereignty of the Republic.

Subparagraph 2 (f):

> ➢ Please list the countries with which South Africa has concluded relevant bilateral agreements.

Police Co-Operation Agreements

1. The South African Police Service co-operates internationally in respect of the exchange of criminal information and police co-operation, including the use of Interpol channels. The South African Police Service has concluded police co-operation agreements, which without mentioning terrorism specifically, can be used to obtain co-operation in terrorism investigations.

2. One example in this regard is the Southern African Regional Police Chiefs Co-operation Agreement in respect of Co-operation and Mutual Assistance in the Field of Crime Combating concluded on 1 October 1997 between 12 Southern African States, namely; Angola, Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe. This agreement provides for cross-border investigations, operations in general and undercover operations. It could also be used for counter-terrorism investigations/operations.
3. Police co-operation agreements have been concluded with:

▪ Brazil	Signed on 26 November 1996
▪ Argentina	Signed on 23 July 1998
▪ Chile	Signed on 12 November 1998
▪ The Russian Federation	Signed on 12 March 1998
▪ France	Signed on 26 June 1998
▪ Hungary	Signed on 3 May 1999
▪ China	Signed on 25 April 2000
▪ Egypt	Signed on 20 July 2000
▪ Nigeria	Signed on 14 March 2001
▪ Portugal	Signed on 22 April 2002

4. Draft agreements with the following countries are still under consideration:

- Bolivia
- Cape Verde
- Colombia
- Croatia
- Cyprus
- Iran
- Malta
- Mexico
- Peru
- Poland
- Russian Federation

- Spain
- Taiwan, Province of China
- Turkey
- Ukraine
- United Arab Emirates
- Venezuela

5. In the case of Taiwan, Province of China, a Memorandum of Understanding (MOU) between the respective liaison offices is under consideration. A draft MOU with Iran on combating illicit drug trafficking is in the process of being finalised.

Mutual legal Assistance Agreements

- 1999/09/16
  USA
  Treaty on Mutual Legal Assistance in Criminal Matters
  Entered into force on 25 June 2001.

- 1999/11/12
  Canada
  Treaty on Mutual Legal Assistance in Criminal Matters
  Entered into force on 5 May 2001.

- 2001/04/19
  Lesotho
  Treaty on Mutual Legal Assistance in Criminal Matters.

- 2001/05/31
  France
  Agreement on Mutual Legal Assistance in Criminal Matters.

Mutual Legal Assistance Agreements negotiated but not yet signed

- Brazil
- Hong Kong
- Namibia
- Zambia

Subparagraph 2 (g):

> ➢ What are the new measures that the South African Government plans to take during 2002 to control immigration in its territory and, in particular, to control the issuance of documents to foreign residents?

1. Measures have always been in place to control the movement of people on South Africa's territory. The Migration component of the Department of Home Affairs is responsible for the admission of persons to, their residence in and their departure from, the Republic of South Africa. The entry into and departure from the country through designated ports of entry are regulated by the provisions of the Aliens Control Act, 1991 (Act No 96 of 1991) (Attached as Addendum G to the National Report) (S/2001/1281).

2. No alien may enter or sojourn in the Republic unless he/she is in possession of an immigration permit to settle permanently in the Republic of South Africa, a visa or a temporary residence permit, all issued in terms of the Aliens Control Act.

3. The issuing and control of the said permits and visas is executed with the assistance of the computerised Movement Control System and the computerised Visa System. The Department of Home Affairs has a computerised visa and entry stop-list to prevent the entry into the South Africa of prohibited persons. All applications made abroad are checked against this stop-list. All ports of entry have access to the visa and entry stop-list, as well as the Movement Control System and the Visa System.

4. The visa and entry stop-list is checked in respect of every alien who enters South Africa whether he/she is in possession of a visa, a temporary residence permit or an immigration permit. The visa and entry stop-list as well as the Movement Control System are again consulted when applications for extensions of temporary residence permits are considered.

5. Strict procedures are in place to ensure that documents are issued only to persons legally entitled thereto. Such procedures include profiling of applicants, checking of sponsors and police clearances.

Subparagraph 3 (c):

> ➢ The CTC notes that, under South African law, extradition is not dependent on treaties, but that South Africa has concluded 13 extradition agreements with other states. Which are those States and what are the matters dealt with in those agreements?

Extradition Agreements

- 1873/12/03
  Austria
  Extradition Treaty

- 1873/12/03
  Hungary
  Extradition Treaty

- 1876/08/14
  France
  Extradition Treaty

- 1878/06/04
  Spain
  Mutual Surrender of Fugitive Criminals (Extradition)

- 1880/11/24
  Luxembourg
  Mutual Surrender of Fugitive Criminals (Extradition)

- 1880/11/26
  Switzerland
  Mutual Surrender of Fugitive Criminals (Extradition)

- 1889/02/19
  Spain
  Amending Treaty on 1878/06/04 for Extradition of Fugitive Criminals

- 1889/05/22
  Argentina
  Mutual Extradition of Fugitive Criminals

- 1892/10/17
  Portugal
  Mutual surrender of Fugitive Criminals (Extradition)

- 1896/02/13
  France
  Amending Art VII and IX of Extradition Treaty of 18760814

- 1898/09/26
  Netherlands
  Mutual surrender of Fugitive criminals (Extradition)

- 1901/06/26
  Austria & Hungary
  Amending Art XI of treaty of 18731203 - extradition of fugitive criminals

- 1901/10/29
  Belgium
  Mutual surrender of Fugitive Criminals (Extradition)

- 1904/06/29
  Switzerland
  Supplementing Art XVII of Treaty of Extradition 1880/11/26

- 1907/03/05
  Belgium
  Supplementing Art XIV of treaty of extradition of 1901/10/29

- 1908/09/12
  Paraguay
  Mutual surrender of fugitive criminals (Extradition)

- 1908/10/17
  France
  Modifying Art II of Extradition Treaty 1876/08/14

- 1909/07/29
  France
  Applying to Tunis the supplementary extradition convention of 1908/10/17

- 1910/09/24
  Greece
  Mutual surrender of fugitive criminals (Extradition)

- 1911/03/03
  Belgium
  Amending Article VI of Extradition Treaty of 1901/10/29

- 1923/08/08
  Belgium
  Extradition conventions of 1901/10/29, 1907/03/05, 1911/11/03 extended to Congo and certain British protectorates

- 1924/11/11 1926/06/04
  Czechoslovakia (Czech Republic and Slovak Republic)
  Extradition of criminals

- 1927/07/11 1927/07/27 1927/11/03
  Czechoslovakia
  Extradition

- 1932/01/20
  Portugal
  Supplementary extradition convention to amend the treaty of 1892/10/17

- 1933/09/13 1933/09/30
  Paraguay
  Supplementary Extradition Convention

- 1944/10/02
  Paraguay
  Supplementary Extradition Treaty

- 1959/09/18
  Israel
  Extradition Treaty

- 1968/09/04 1968/09/05
  Swaziland
  Extradition Agreement

- 1969/02/27 1969/03/04
  Botswana
  Extradition Treaty

- 1972/02/25
  Malawi
  Extradition Agreement

- 1976/05/26
  Israel
  Amendment to Extradition Treaty of 1959/09/18

- 1993/09/24
  Swaziland
  Exchange of Notes to amend the Extradition Treaty of 1968/09/4/5

- 1995/06/20
  Lesotho
  Agreement regarding Extradition

- 1995/12/13
  Australia
  Treaty on Extradition

- 1998/12/09
  Australia
  Treaty on Extradition
  Entered into force 2001/08/01

- 1999/09/16
  USA
  Extradition Treaty
  Entered into force 2001/06/25

- 1999/11/12
  Canada
  Treaty on Extradition
  Entered into force 2001/05/01

- 2001/04/19
  Lesotho
  Treaty on Extradition.

- **Countries designated in terms of section 3(2) of the Extradition Act**: Ireland, Namibia, the United Kingdom of Great Britain and Northern Ireland and Zimbabwe.

Extradition treaties negotiated but not yet signed

- Argentina
- Hong Kong
- Hungary
- Namibia
- Nigeria
- Zambia

- The SADC Protocols in Extradition and Mutual Legal Assistance in Criminal Matters were adopted by the SADC Ministers of Justice and will be signed by the Summit during August 2002.

- The African Union Convention on Extradition was finalised during a meeting of legal experts held in Addis Ababa from 4-8 April 2001.

These agreements regulate the rendition of fugitives and offenders in accordance with general principles of international law.

Subparagraph 3 (d):

➢ The CTC would welcome a report on progress on the implementation in South Africa of the relevant conventions and protocols relating to terrorism to which it is already a party and in particular of the International Convention for the Suppression of the Financing of Terrorism, mentioned in the report as being in the course of being ratified. What are South Africa's intentions with regard to the other conventions and protocols relating to terrorism to which it is not yet a party?

1. As indicated in the National Report (S/2001/1281), South Africa is Party to five of the anti-terrorism conventions, namely:

   - Convention on Offences and Certain Other Acts Committed on Board Aircraft, Tokyo 1963.
   - Convention on the Unlawful Seizure of Aircraft, The Hague, 1970.
   - Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, Montreal, 1971.
   - Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, Montreal 1971, Montreal 1988.
   - Convention on the Marking of Plastic Explosives for the Purposes of Detection, Montreal, 1991.

2. The four aviation conventions are given effect through the Civil Aviation Offences Act, 1972. As stated in the National Report (S/2001/1281), the Act is currently being amended in order to, *inter alia*, create graver penalties for infringements of the Act, and by analogy, of the relevant Conventions.

3. The Convention on the Marking of Plastic Explosives for the Purposes of Detection is given effect in the Explosives Act, which has been amended.

4. The other international conventions, which South Africa must still ratify, will be given effect to through the proposed Anti-Terrorism Bill.

5. The International Convention for the Suppression of the Financing of Terrorism, the International Convention for the Suppression of Terrorist Bombings as well as the OAU Convention on the Prevention and Combating of Terrorism have proceeded through the first stage of approval for ratification (Cabinet approval) and will now be submitted to both Houses of Parliament in accordance with South Africa's constitutional requirements.

➢ What are South Africa's intentions with regard to the UN Convention Against Transnational Organised Crime?

1. In Section B, paragraph 4.1 (page 19) of the National Report (S/2001/1281), it is stated that South Africa "has the firm intention of submitting each Convention to Parliament for ratification in accordance with its constitutional procedures and ensuring that the necessary legislation to implement each Convention in its domestic law is in place". This intention still remains.

2. It was noted under subparagraph 2 (a), in addition to a general offence for terrorist acts, it is envisaged that the Anti-Terrorism Bill will provide for specific offences in respect of murder, kidnapping, or other attacks upon the person or liberty of an internationally protected person, hostage taking, unlawful possession of nuclear material, acts against international maritime navigation, acts against fixed platforms located on the continental shelf, and the seizure and forfeiture of property suspected of being involved in terrorist activities. It is also envisaged that by creating these offences in the South African domestic law, the way will be paved for South Africa to ratify the Conventions and Protocols it still needs to ratify, such as: the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons; the International Convention Against the Taking of Hostages; the Convention on the Physical Protection of Nuclear Material; the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation; the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf; the International Convention for the Suppression of Terrorist Bombings and the International Convention for the Suppression of the Financing of Terrorism.

Subparagraph 3 (e):

➢ Have the crimes mentioned in the relevant international conventions and protocols been included as extraditable offences in the bilateral extradition agreements, which South Africa has concluded with other countries?

1. South Africa's bilateral treaties do not identify crimes on a list basis and do not therefore make mention of terrorism. The provision in the bilateral treaties reads as follows:

> *"For the purpose of this treaty, extradition shall be granted for conduct which constitutes an offence under the laws of both Contracting States that is punishable by imprisonment for a period of at least one year or by a more severe penalty".*

2. As mentioned above, for extradition to take place, the other Contracting State should therefore also have terrorism as an offence.

Subparagraph 3 (g):

➢ From the copy of the Extradition Act attached to the report, it appears that it is currently possible under South African law for requests for extradition of alleged terrorists to be refused on political grounds. Are there any plans to amend that Act to ensure that is not the case?

1. The Extradition Act does not provide for refusal to extradite on "political grounds". The Act provides for refusal to extradite on, as one of the grounds "political opinion" (section 11). However, bilateral treaties do provide for refusal to extradite on political grounds.

2. As already stated, the Extradition Act provides for refusal to extradite if the Minister is "satisfied that the person concerned will be prosecuted or punished or prejudiced at his or her trial in a foreign State by reason of his or her gender, race, religion, nationality or political opinion".

Paragraph 4:

➢ Has South Africa addressed any of the concerns expressed in paragraph 4 of the Resolution?

1. The South African Government fully agrees that there is a need to enhance co-ordination of efforts on national, subregional, regional and international levels in order to strengthen a global response to terrorism including its close connection with transnational organised crime, illicit drugs, money-laundering, illegal arms trafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly materials.

2. All of the criminal acts listed in paragraph 4 are covered in the legislative framework in place in South Africa, the relevant Acts and Bills of which are specified under various paragraphs throughout South Africa's National Report submitted pursuant to paragraph 6 of Security Council resolution 1373 (2002) (S/2001/1281). This demonstrates the seriousness with which the South African Government approaches all of these crimes.

3. At the national level an Inter-Departmental Working Group on Counter-Terrorism has been established to enhance co-ordination in response to the serious challenge posed by terrorism and related threats. These are approached in an holistic way and all of the relevant authorities responsible for the implementation of various aspects related to international Conventions and local legislation with regard to terrorism, transnational organised crime, illicit drugs, money-laundering, illegal arms trafficking, and the illegal movement of nuclear, chemical, biological and other potentially deadly materials, are represented on the Working Group. An Inter-Departmental Working Group on Unregulated Foreign Military Assistance and a National Joint Operational and Intelligence Structure has also been established. A committee under the auspices of the National Joint Operational and Intelligence Structure, acting as "Operation Protect", came into operation after 11 September 2001. "Operation Protect" consists of all security services in South Africa and its main aim is investigations into international terrorism.

4. At the subregional and regional levels, co-operation is intensifying over a broad front with the specific aim to combating terrorism and related threats. South Africa participates actively in these endeavours, for example in the context of the Southern Africa Common Monetary Area, various Police Co-operation Agreements, the Border Control Operational Co-ordinating Committee, the Agreement on Mutual Co-operation in the Field of Crime Combating, Mutual Legal Assistance Agreements, preparations underway to co-ordinate the implementation of the Convention of the Organisation for African Unity on the Suppression and Combating of Terrorism, etc.

5. At the international level South Africa co-operates and participates actively in the various international fora where these issues are deliberated.